

**Amend the annotation to the listing of Orchidaceae included in Appendix I, as follows:**

**Delete the current annotation, which states:**

**For all of the following Appendix-I species, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers are not subject to the provisions of the Convention.**

**Replace with the following new annotation:**

**For all of the following Appendix-I species, seedling or tissue cultures obtained in vitro, in solid or liquid media, and transported in sterile containers are not subject to the provisions of the Convention only if the specimens meet the definition of ‘artificially propagated’ agreed by the Conference of the Parties**

**Proponent: The United States of America**

**Summary:** Two genera (*Paphiopedilum* and *Phragmipedium*) and six other species in the family Orchidaceae are included in Appendix I. These and hybrids involving them are in considerable demand in horticulture and are traded in large quantities (particularly *Paphiopedilum* and *Phragmipedium*). Much of the trade is in “flasked” specimens. These are defined more formally in the annotations to the Appendices as: seedlings or plantlets raised from tissue culture grown in a sterile medium and transported in flasks, tubes or other small containers.

The Convention allows for the commercial trade in Appendix-I plant species in Article VII, paragraph 4 which states: “Specimens of [...] a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.” However, no definition of artificially propagated is provided in the Convention text itself.

On the understanding that flasked specimens of orchids are artificially propagated, the Parties have gone one step further and in 1995 exempted such specimens from the provisions of the Convention, as described in the annotation which currently states:

*For all of the following Appendix-I species, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers are not subject to the provisions of the Convention.*

In parallel to this, the Parties have established quite a strict set of criteria for the definition of “artificially propagated”, contained in *Resolution Conf. 11.11 (Rev CoP14)*. Under these criteria, it is not necessarily the case that all flasked orchid specimens would meet the definition of artificially propagated under CITES. In particular, seed or tissue must be obtained from specimens exempt from the provisions of the Convention or cultivated parental stock (itself subject to definition in the Resolution). It recommends that an exemption to this, that is the use of seeds from wild plants, only be granted as long as such collection was legal and the relevant Scientific Authority had determined both that collection was non-detrimental to the wild population and trade in specimens would have a positive effect on conservation of wild specimens (entailing reintroduction and establishment of cultivated sources of propagules for the future).

The Parties have specifically drawn attention to this in *Resolution Conf. 11.11 (Rev CoP14)* in the following paragraph:

**“Regarding flasked seedlings of Appendix-I orchids**

**RECOMMENDS** that flasked seedlings of orchid species included in Appendix I obtained *in vitro*, in solid or liquid media, and transported in sterile

containers, be interpreted as being exempt from CITES control only if they have been artificially propagated in accordance with the definition provided above, taking into account the provisions of Article VII, paragraph 4, and Article I, paragraph (b) (iii), and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this exemption;”

However, this understanding is not explicit in the relevant annotation text in the Appendices. The current proposal aims to rectify this.

**Analysis:** This proposal aims to ensure that the annotation in the Convention regarding specimens of Appendix-I listed orchids is in accordance with a Resolution that refers to the same specimens.

Its effect is to underline the fact that Parties should only treat flaked specimens of Appendix-I listed orchids as exempt from the provisions of the Convention if they are satisfied that they are “artificially propagated” as defined in *Resolution Conf 11.11. (Rev CoP14)*. This provision is theoretically already in force. In practice, it is unlikely to be adhered to and indeed its strict implementation seems likely to cause enforcement problems. A flaked specimen is clearly distinguishable from any other kind of specimen, and is clearly not a wild-collected plant in any conventional sense. It is thus easy to enforce a simple exemption for flaked specimens. However, assessing whether such specimens meet the definition of “artificially propagated” outlined above and set out in detail in *Resolution Conf 11.11. (Rev CoP14)* (see below) is far from straightforward and cannot be done merely by inspecting a specimen or shipment. This may place a considerable onus on enforcement and implementation agencies.

Exemptions for “flaked” specimens using the same wording apply to Appendix-II listed plants covered by annotations #1 and #4. These are not specifically referred to in *Resolution Conf 11.11 (Rev CoP14)*, nor are they specifically referred to as “artificially propagated” and so there remains ambiguity about whether these too may be expected to be covered by the definition of “artificially propagated” adopted in that Resolution.

#### Additional Information

**Resolution 11.11 (Rev. CoP14) provides the following text:**

***“Regarding the definition of ‘artificially propagated’***

ADOPTS the following definitions for terms used in this Resolution:

a) ‘under controlled conditions’ means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather; and

b) ‘cultivated parental stock’ means the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the designated CITES authorities of the exporting country:

- i) established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; and
- ii) maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigour and productivity of the cultivated parental stock;

DETERMINES that the term ‘artificially propagated’ shall be interpreted to refer to plant specimens:

a) grown under controlled conditions; and

b) grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules that either are exempt from the provisions of the Convention or have been derived from cultivated parental stock;

DETERMINES that plants grown from cuttings or divisions are considered to be artificially propagated only if the traded specimens do not contain any material collected from the wild; and

RECOMMENDS that an exception may be granted and specimens deemed to be artificially propagated if grown from wild-collected seeds or spores only if, for the taxon involved:

a) i) establishment of a cultivated parental stock presents significant difficulties in practice because specimens take a long time to reach reproductive age, as for many tree species;

ii) the seeds or spores are collected from the wild and grown under controlled conditions within a range State, which must also be the country of origin of the seeds or spores;

iii) the relevant Management Authority of that range State has determined that the collection of seeds or spores was legal and consistent with relevant national laws for the protection and conservation of the species; and

iv) the relevant Scientific Authority of that range State has determined that:

A. collection of the seeds or spores was not detrimental to the survival of the species in the wild; and

B. allowing trade in such specimens has a positive effect on the conservation of wild populations;

b) at a minimum, to comply with paragraph iv) A. and B. above:

i) collection of seeds or spores for this purpose is limited in such a manner such as to allow regeneration of the wild population;

ii) a portion of the plants produced under such circumstances is used to establish plantations to serve as cultivated parental stock in the future and become an additional source of seeds or spores and thus reduce or eliminate the need to collect seeds from the wild; and

iii) a portion of the plants produced under such circumstances is used for replanting in the wild, to enhance recovery of existing populations or to re-establish populations that have been extirpated; and

c) in the case of operations propagating Appendix-I species for commercial purposes under such conditions they are registered with the CITES Secretariat in accordance with Resolution Conf. 9.19 (Rev. CoP13) on Guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix-I species”

**Reviewers:**

TRAFFIC East/Southern Africa